

STATE OF MICHIGAN
COURT OF APPEALS

TRAVIS B. COTA,

Plaintiff-Appellee,

v

GARY B. RENDALL and PATRICIA
RENDALL,

Defendants-Appellants.

UNPUBLISHED
December 3, 2002

No. 232817
Oakland Circuit Court
LC No. 00-021965-CH

Before: O'Connell, P.J., and White and B.B. MacKenzie*, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court order in plaintiff's favor following a bench trial, in this action for removal of encroachments, to quiet title and injunction for continuing trespass. We affirm.

The parties are adjoining landowners. Defendants' parcel of land is immediately south of plaintiff's property. Plaintiff purchased his parcel by land contract in 1999. Defendants have owned their parcel for over twenty years. Plaintiff alleged that defendants' shed and fence encroached on his property. Defendants denied any encroachment, but alleged that even if their shed and fence did encroach on plaintiff's property, that property had been acquired by adverse possession.

On appeal, defendants first argue that plaintiff failed to establish that the shed and fence encroached on his property by a preponderance of the evidence. Our review is somewhat hampered by the fact that the trial court made no findings whatever with regard to trespass, and confined its opinion and order to the question of adverse possession. Nevertheless, we glean from the record that the court was satisfied that plaintiff's testimony regarding measurements and observations he made using found irons as reference points was adequate to establish the encroachment.¹ Although plaintiff would have been on firmer ground had he laid the proper

¹ Plaintiff also testified regarding aerial photos with and without property lines, but it appears that although the aerial photos without property lines were offered and admitted as exhibits, the
(continued...)

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

foundation for admitting the surveys without limitation as to their use, or introduced the photos showing the property lines, we cannot say that the testimony was insufficient to establish the encroachment, or that the court's decision was against the great weight of the evidence.

Defendants next challenge the court's admission of aerial photos and two surveys. We find no error in the court's admission of the photos. An adequate foundation was presented. With respect to the surveys, this was a bench trial and the court admitted them for a limited purpose. There is no indication that the court failed to confine its consideration of the evidence to the limited basis of its admission. Thus, we find no error.

Lastly, defendants challenge the court's finding that defendants did not establish adverse possession. "To establish adverse possession, the claimant must show that its possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years." *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995); MCL 600.5801.

The trial court found based on the evidence, including the aerial photos, that defendants had not established adverse possession. Finding no clear error, we affirm that aspect of the court's decision. *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992).

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Barbara B. MacKenzie

(...continued)

aerial photos with property lines were not.